

Notice of Allowability

Application No.

09/470,650

Examiner

Lisa A Kilday

Applicant(s)

FIGURA ET AL.

Art Unit

2829

-- **Th MAILING DATE of this communication appears on th cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE filed on 11/10/03.
2. ☒ The allowed claim(s) is/are 41-43.
3. ☒ The drawings filed on 22 December 1999 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No. <u>1103 (10/6 + 11/10/03) (2)</u> | 7 <input type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

Response to Arguments

Applicant's arguments filed 11/10/03 have been fully considered but they are not persuasive.

In response to applicant's arguments, the recitation of a first metal line and a second metal line has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant requested that the examiner in her reasons for allowance interpret the preamble's first and second metal line to be two distinct metal lines. The examiner interprets the preamble's first and second metal line to be a single metal line because the specification (including the drawings) only supports a single metal line. The metal line found in figs. 1-4 only has one potential although labeled with two reference nos. 20 & 32.

The applicant relies on the specification (pg. 4, lines 16-19; pg. 9, line 17 – pg. 10, line 3) to support his position that the preamble should be interpreted as two distinct metal lines. The passage found on pg. 4, lines 16-19 states that the invention can be used to form "a number of other structures" and gives one example, a storage node. Applicant's point is moot because the claim and the preamble do not contain the

limitation of a storage node. The passage found on pg. 9, line 17 – pg. 10, line 3 states that there are additional embodiments and that the recess can be formed between the oxide layers or between two protruding features. The applicant's point is moot on pg. 9-10 for two reasons. First, the applicant's point is not persuasive because the specification fails to provide any additional embodiments other than the oxide layers. Second, the applicant's point is moot because the specification does not give an example of what type of material the two protruding features are. The only example provided is that the two protruding features are oxide layers. Thus, in the instant claims, the "first metal line" and "second metal line" are interpreted by the examiner as a single metal line because the metal line does not have multiple potentials and is in fact the same metal line. The first and second metal line language found in the preamble is not given patentable weight because the instant specification supports and enables a single, continuous metal line where a polymer can form inside the metal line.

Allowable Subject Matter

Claims 41-43 allowed.

The following is an examiner's statement of reasons for allowance: prior art teaches forming a polymer in a deposition and etch surrounding. Shingo (JP 06-275568) teaches a highly doped region (2) which may be a metal line if polysilicon is interpreted to be a metal. However, Shingo uses the highly doped region as an etch stop and etches off the highly doped region prior to polymer deposition. Prior art does not teach or suggest forming a polymer between a metal line on a device having a metal line, providing a layer over said polymer, and retaining a state of said polymer.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-0957. See MPEP 203.08.

Any inquiry concerning this communication from the examiner should be directed to Lisa Kilday whose telephone number is (703) 306-5728. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo, can be reached on (703) 308-1233. My new telephone number after 1/13/04 will be: (571) 272-1962. My supervisor, Kamand Cuneo, can be reached at (571) 272-1957 after 1/13/04. The fax number for the group is (703) 305-3432. MPEP 502.01 contains instructions regarding procedures used in submitting responses by facsimile transmission.

Lisa Kilday

LAK

11/28/03


EVAN PERT
PRIMARY EXAMINER